



California Fair Political Practices Commission

September 12, 1989

Lois Stornetta, Secretary
Byron-Bethany Irrigation District
3944 Main Street
P.O. Box 273
Byron, CA 94514

Re: Your Request for Advice
Our File No. A-89-482

Dear Ms. Stornetta:

You have requested advice on behalf of Byron-Bethany Irrigation District Board Member Charles M. Uznay regarding his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter confirms telephone advice I provided to Mr. Uznay on August 14, 1989.

QUESTION

Trimark Communities holds an option on property owned by Mr. Uznay which is located within Trimark's proposed Mountain House Planned Community. May Mr. Uznay participate in negotiations with Trimark regarding the district's sale of water to Trimark for the planned community?

CONCLUSION

Mr. Uznay may not participate in the negotiations to sell water to Trimark for the proposed planned community.

FACTS

Trimark Communities is negotiating with the Byron-Bethany Irrigation District to purchase a water supply for their proposed Mountain House Planned Community. The boundaries of the planned

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

community are predominantly located within the district's boundaries. Mr. Uznay owns property within the area of Trimark's planned community. Trimark holds an option to purchase Mr. Uznay's property.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

* * *

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(b) and (c).

In our recent telephone conversation, Mr. Uznay indicated that Trimark purchased the option from him within the past 12 months for an amount in excess of \$250. Accordingly, Trimark is a source of income to Mr. Uznay and Mr. Uznay may not participate in any decision which will have a reasonably foreseeable material financial effect on Trimark.

Commission regulations provide guidance on when the reasonably foreseeable effects of a decision are material. Specifically, Regulation 18702.1 (copy enclosed) provides that the effect of a decision is material if any person or business entity which has been a source of income to the official of \$250 or more in the preceding 12 months, is directly involved in a decision before the official's agency. A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Regulation 18702.1(b).

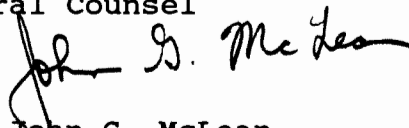
Trimark initiated and is the subject of the proceeding involving the district's decision on the possible sale of water to Trimark. Since the decision materially affects Trimark, Mr. Uznay may not participate in the decision.²

An official participates in the making of a governmental decision when, acting within the authority of his or her position, he or she negotiates, without significant substantive review, with a governmental entity or private person regarding the decision. (Regulation 18700(c)(1), copy enclosed.) Accordingly, Mr. Uznay may not participate in the negotiations with Trimark regarding the purchase of a water supply for the proposed planned community.

If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John G. McLean
Counsel, Legal Division

KED:JGM:aa

Enclosures

² Presumably, the decision also affects Mr. Uznay's "pocketbook" by affecting whether or not Trimark will exercise the option on his property. Thus, once more than 12 months have elapsed since Trimark purchased the option, he may still have disqualification obligations. If this occurs, Mr. Uznay should contact us for further advice.

BYRON-BETHANY IRRIGATION DISTRICT

3944 MAIN STREET (415) 634-3534
P.O. BOX 273, BYRON, CALIFORNIA 94514



OFFICERS
JOHN J. CARVALHO - PRESIDENT
LOIS STORNETTA
SECRETARY/COLLECTOR/TREASURER
LORETTA BORGES - ASSESSOR
FRED K. SPECHT - MANAGER
MINASIAN, MINASIAN, MINASIAN
SPRUANCE, BABER, MEITH & SOARES
ATTORNEYS
CH₂M HILL - ENGINEERS

JOHN J. CARVALHO
DIRECTOR DIVISION NO. 1
GERALD E. TENNANT
DIRECTOR DIVISION NO. 2
RUTH SANTOS
DIRECTOR DIVISION NO. 3
CHARLES M. UZNAY
DIRECTOR DIVISION NO. 4
WILLIAM G. RAYHER
DIRECTOR DIVISION NO. 5

REGULAR MEETING HELD ON SECOND TUESDAY OF EACH MONTH

August 14, 1989

John McLean
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Mr. McLean:

Our Director Charles M. Uznay spoke to you on the telephone this morning regarding his position as a member of the District's Board of Directors in negotiations with Trimark Communities for a water supply.

Trimark Communities is negotiating with the Byron-Bethany Irrigation District to purchase a water supply for their proposed Mountain House Planned Community which is predominantly within the District's boundaries.

Director Uznay owns property within the area of Trimark's planned community, which is also within District boundaries.

You advised Director Uznay that he should abstain from participating in the negotiations and he requested the advise in writing.

We are hereby requesting a written response to the District and Director Uznay regarding his position in this matter.

If you have any questions, please call this office and speak to Lois Stornetta.

Very truly yours,

BYRON-BETHANY IRRIGATION DISTRICT

A handwritten signature in cursive script, reading "Lois Stornetta".

Lois Stornetta, Secretary

cc: Charles M. Uznay
Rt. 1, Box 34
Byron, CA 94514

Aug 16 9 22 AM '89
FPPC



California Fair Political Practices Commission

August 21, 1989

Lois Stornetta
Byron-Bethany Irrigation
District
P.O. Box 273
Byron, CA 94514

Re: Letter No. 89-482

Dear Ms. Stornetta:

We received your letter requesting confirmation of advice under the Political Reform Act on August 16, 1989. Your letter has been assigned to John McLean for response. If you have any questions, you may contact him directly at (916) 322-5901.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

Kathryn E. Donovan

Kathryn E. Donovan
General Counsel

KED:plh:confadv1

BYRON-BETHANY IRRIGATION DISTRICT

3944 MAIN STREET (415) 634-3534
P.O. BOX 273, BYRON, CALIFORNIA 94514

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DIRECTOR DIVISION NO. 5

REGULAR MEETING HELD ON SECOND TUESDAY OF EACH MONTH

August 14, 1989

John McLean
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

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We are hereby requesting a written response to the District and Director Uznay regarding his position in this matter.

If you have any questions, please call this office and speak to Lois Stornetta.

Very truly yours,

BYRON-BETHANY IRRIGATION DISTRICT

Lois Stornetta, Secretary

cc: Charles M. Uznay
Rt. 1, Box 34
Byron, CA 94514

Aug 16 9 22 AM '89

FILED



California Fair Political Practices Commission

August 24, 1989

Charles H. Bell, Jr.
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
770 L Street, Ste. 800
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-238

Dear Mr. Bell:

You have requested advice on behalf of ARCO PAC concerning the campaign provisions of the Political Reform Act.¹

QUESTIONS

1. Are employee contributions to ARCO PAC which are designated for a specific candidate attributable to ARCO PAC or to the employee for purposes of the contribution limitations imposed by Proposition 73?

2. May employee-designated funds which were held by ARCO PAC on January 1, 1989, be carried forward for purposes of making contributions to candidates in 1989?

CONCLUSIONS

1. Employee payments made to ARCO PAC which are earmarked for specific candidates are attributable to the employees making the payments. Therefore, an employee may not designate more than \$1,000 per fiscal year per candidate. As long as the employee does not also in fact direct and control the contributions made by ARCO PAC, the committee may contribute an additional \$5,000 per fiscal year to the same candidate.

However, if the employee also in fact directs and controls the contributions made by ARCO PAC, the contributions made by the employee and by ARCO PAC must be aggregated for purposes of the

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

contribution limitations. In this situation, the employee may designate up to \$1,000 per fiscal year to a particular candidate, and ARCO PAC may contribute additional funds to the same candidate up to an amount which, when added to the employee's contribution, would not exceed the \$5,000 contribution limit for broad based political committees.

2. Employee-designated funds which were received prior to 1989 may be carried forward for purposes of making contributions to candidates in 1989. However, employees who have designated amounts which would result in the making of contributions that exceed the applicable limits should be asked to submit new designations.

FACTS

ARCO PAC is a broad based political committee as defined in Section 85102(d) and Regulation 18502. The committee allows its employee-contributors to complete a form designating their contributions for specific candidates or committees. The committee then transmits the contributions to the intended recipients, or provides checks to the employees for transmittal or delivery to the candidates. Such contributions are accompanied by a transmittal letter notifying the recipient of the true source of the funds.

ANALYSIS

As amended by Proposition 73 on the June 1988 primary election ballot, the Act imposes limitations on contributions made to candidates for state and local offices. (Sections 85300-85307.) "Persons"³ may contribute up to \$1,000 per fiscal year (July 1 - June 30) to a candidate. (Section 85301.) "Political committees"⁴ may contribute up to \$2,500 per fiscal year to a candidate, and "broad based political committees"⁵ may contribute up to \$5,000 per fiscal year to a candidate. (Section 85303.)

³ Section 85102(b) defines "person" as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization.

⁴ Section 85102(c) defines "political committee" as a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates.

⁵ Section 85102(d) defines "broad based political committee" as a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates.

Your first question concerns contributions made through an "intermediary." A person is an intermediary when, without disclosure of the identity of the contributor, the intermediary would be considered the source of the contribution by the recipient. When a check is payable to a third party, but earmarked by the contributor for a specific candidate, the third party becomes an intermediary when the contribution is made by means of his or her check. (Wilson Advice Letter, No. A-79-077, copy enclosed.) In addition, Section 84302.5 states:

A person is an intermediary for transmittal of a contribution if he or she delivers to a candidate or committee a contribution from another person unless such contribution is from the person's employer, immediate family or an association to which the person belongs. No person who is the treasurer of the committee to which the contribution is made or is the candidate who controls the committee to which the contribution is made shall be an intermediary for such a contribution.

When a contribution is made through an intermediary, the recipient must disclose both the intermediary and the contributor. (Section 84302.)

There is nothing in the Act which indicates that a person who merely acts as an intermediary for a contribution is the maker of the contribution. Therefore, when ARCO PAC acts as an intermediary in connection with an employee's designated contribution to a candidate, the employee is the contributor and the appropriate limit to be applied to the contribution is the \$1,000 limit imposed on the employee.

It also should be noted that Regulation 18531.5, as adopted by the Commission on June 6, 1989, requires aggregation of contributions when a person or a majority of the same persons in fact directs and controls the decisions of two or more entities to make contributions. Therefore, if an employee makes contributions to candidates from personal funds and also in fact directs and controls the contributions made by ARCO PAC, the employee's contributions and the committee's contributions must be aggregated for purposes of the contribution limits.

Your second question is about carryover of funds held by ARCO PAC on January 1, 1989, which were designated by employee-contributors for specific candidates. Section 85306 prohibits the use of campaign funds possessed on January 1, 1989, for the purpose of supporting or opposing a candidacy. A preliminary injunction issued by the U.S. District Court for the Eastern District of California enjoins the Commission from enforcing Section 85306 with regard to contributions received prior to January 1, 1989, which were received within the contribution limitations of Proposition 73. (Service Employees International Union, AFL-CIO, CLC v. FPPC, Case No. CIVS 89-0433-LKK-JFM.) A final decision on this issue is expected in August 1989.

Charles H. Bell, Jr.
Page 4

Therefore, under the preliminary injunction, ARCO PAC may carry forward employee-designated funds to the extent that no employee designation would result in the making of a contribution which exceeds the contribution limitations. Such employee-designated contributions would not count toward the employee's limit of \$2,500 for contributions made to ARCO PAC during the current fiscal year.

Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

By: Carla J. Wardlow
Assistant Chief, Technical
Assistance & Analysis Division

LAW OFFICES OF
NIELSEN, MERKSAMER,
HODGSON, PARRINELLO & MUELLER
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SAN FRANCISCO
650 CALIFORNIA STREET, SUITE 2650
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 989-6800

770 L STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752

FILE NUMBER

April 13, 1989

6278.03

Ms. Kathryn Donovan
Acting General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request for Advice

Dear Ms. Donovan:

This firm represents the ARCO PAC (current ID # 781909) which has been in existence for almost ten years. The PAC is a combined federal/state political action committee, which files reports with both the Fair Political Practices Commission and the Federal Election Commission. ARCO PAC would qualify as a broad-based committee under FPPC Regulation 18502. This letter requests your advice on the impact on Proposition 73 on the activity of the ARCO PAC.

Facts

The unique feature of the ARCO PAC is that the employee/contributor is able to designate the recipient of contributions from funds contributed by the employee to the PAC. The PAC maintains a record of these "donor designated" funds and makes contributions pursuant to the donor's request. The contribution transmittal letter indicates that the contribution is from the employee/donor; in some instances, the employee/donor actually delivers or sends his or her designated contribution to the recipient at fundraising events. (A sample transmittal letter and a sample donor designation form are attached). ARCO PAC also contributes "nondesignated" funds which are received by the PAC and contributed at the PAC's discretion. As you know, Proposition 73 imposes limits on contributions to candidates by persons and political committees.

Questions

The specific questions I would like advice about are as follows:

- 1) Are contributions made pursuant to an employee's designation attributable to the employee or to ARCO PAC for purposes of

Ms. Kathryn Donovan
April 13, 1989
Page 2

determining the applicable contribution limit
to a candidate?

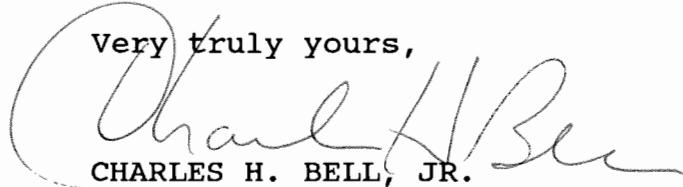
For example, if an employee designates his PAC contribution to candidate X, and the PAC makes the contribution pursuant to that designation, is the contribution made by the employee pursuant to his or her \$1,000 limit, or made by the political committee pursuant to its \$5,000 per fiscal year contribution limit.

We are aware that under this scenario there are other reporting ramifications (i.e., that ARCO PAC would be deemed an "intermediary" pursuant to Government Code sections 84302) if it is not deemed to be the contributor.

2) Assuming the Commission by regulation again permits the carryover of funds raised before January 1, 1989 for use to support candidates in 1989 and after, will such donor-designated funds on hand as of January 1, 1989 be counted in the amount the PAC may carry forward?

If you need any further information to enable you to respond to this letter, please do not hesitate to call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles H. Bell, Jr.", is written over a circular embossed seal. The signature is in dark ink and is quite fluid.

CHARLES H. BELL, JR.

CHB:ss

Enclosures



ARCO PAC

Atlantic Richfield Company

DATE

NAME & ADDRESS

Gentlemen:

Enclosed is an earmarked contribution from a member of ARCO PAC, Atlantic Richfield Company's voluntary political action committee for employees. There are no corporate funds in the enclosed contribution.

Participation in this program is completely voluntary, and the extent of any particular employee's participation in the program is considered confidential information within the Company.

If you have any questions, please call
Manager, Political Affairs, at (213) 486-0273.

For your records, this check is an earmarked contribution from the following employee:

William W.
23637 Park Belmonte
Calabasas, CA 91302

Employer: Atlantic Richfield Company
Occupation: Vice President

Sincerely,

Treasurer

Enclosure: Check #2593

xc: William W.



ARCO PAC
Atlantic Richfield Company

SAMPLE

This is No Carbon Required paper

Donor-designated Contribution Request

Instructions: Complete this form when you wish to designate all or part of the funds you have accumulated in your ARCO PAC Donor-designated account to a political candidate or committee. Your balance can be obtained by calling the ARCO PAC office at (213) 486-0273. If you do not have enough funds in your account, enclose a personal check or money order made payable to ARCO PAC with this form. **Return to: ARCO PAC, Atlantic Richfield Company, 515 South Flower Street, Room 3289, Los Angeles, CA 90071; or use the postage-paid envelope provided.**

Check one:

- ☐ I am a member of ARCO PAC.
- ☐ I am not a member of ARCO PAC. This contribution will enroll me in ARCO PAC.

Please print or type

Full name*		Social Security number	Today's date
Home address (street, city, state, zip code)*			
Business address (room number, street, city, state, zip code)			Work location
Business telephone	Home telephone	Job title*	

Company affiliation*: _____

*Required by the Federal Election Commission

Please issue an ARCO PAC check payable to the following:

Name of candidate or political committee	Amount (\$)
Address (street, city, state, zip code)	

Office of Candidate:

- ☐ U.S. President
- ☐ U.S. Senate
- ☐ U.S. House of Representatives
- ☐ Governor
- ☐ State Senate
- ☐ State House
- ☐ Local Candidate (specify office) _____
- ☐ Other (specify office) _____

State District

Party

- ☐ Republican
- ☐ Democrat
- ☐ Other (specify) _____

Election Type

- ☐ General
- ☐ Primary
- ☐ Special
- ☐ Other _____

Election Date _____

Category

- ☐ Incumbent
- ☐ Challenger
- ☐ Open Seat

Purpose

- ☐ Fundraiser
- Date _____
- ☐ General support
- ☐ Retire debt

Please send my check with cover letter to one of the following:

- ☐ Directly to candidate or committee listed above.
- ☐ My home address for personal handling.
- ☐ My business address for personal handling.

Please check one:

- ☐ Account withdrawal
- ☐ Personal check enclosed
(make check payable to ARCO PAC)

My contribution is voluntary. I am aware of my right to refuse to contribute without reprisal of any kind. I am also aware of the political purpose of ARCO PAC and that a copy of the report of ARCO PAC is filed with the Federal Election Commission and is available for purchase. I am a U.S. citizen or I have been admitted as a permanent United States resident.

Signature

Date



California Fair Political Practices Commission

April 21, 1989

Charles H. Bell
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
770 L Street, Suite 800
Sacramento, CA 95814

Re: Letter No. 89-238

Dear Mr. Bell:

Your letter requesting advice under the Political Reform Act was received on 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh